

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs September 20, 2004

**VERA LYNNE STILES, ET AL v. MEIGS COUNTY, TENNESSEE d/b/a
MEIGS COUNTY AMBULANCE SERVICE, ET AL**

**Direct Appeal from the Circuit Court for Meigs County
No. 3391 Honorable Russell Simmons, Judge**

No. E2003-02115-COA-R3-CV - FILED OCTOBER 19, 2004

This is an appeal from a judgment in favor of the Defendants in a professional negligence case against a paramedic and his governmental employer pursuant to the Tennessee Governmental Tort Liability Act. The Plaintiffs filed a notice of appeal and subsequently filed a short narrative statement of evidence. The Defendants filed a motion to strike the statement of evidence and dismiss the appeal asserting that the statement of evidence was not timely filed and that the Plaintiffs failed to give notice that no transcript or only a partial transcript would be filed. The trial court transferred the matter to this Court to resolve. We denied the motion to dismiss and granted an extension of time to the Plaintiffs for the late filing of the statement of evidence. Then the Defendants filed a counter-statement of the evidence asserting that the Plaintiffs' statement of evidence was not accurate. We remand this cause to the trial court to determine whether the Plaintiffs' statement of evidence is a fair, accurate, and complete account of what transpired in the trial court with respect to those issues which form the bases for this appeal.

Tenn. R. App. 3 Appeal as of Right; Case Remanded

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Kevin T. Beck, Chattanooga, Tennessee, for the Appellants.

Michael E. Evans, Nashville, Tennessee, for the Appellee.

MEMORANDUM OPINION¹

¹Rule 10 of the Rules of the Court of Appeals provides that "[t]his Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a
(continued...)

This is a suit against a paramedic, Stanley Murrey, and his employer, Meigs County, Tennessee, d/b/a Meigs County Ambulance Service, (“Defendants”) alleging that the paramedic responded to a call for medical assistance at the home of the Plaintiff, Vera Lynne Stiles. The Plaintiffs aver that the Defendant Murrey evaluated her condition and advised her that she was not having a heart attack, but rather a panic attack and that there was nothing that could be done for her at the hospital. The Plaintiff deferred seeking medical attention. Over the next day and night, her condition did not improve and she went to the hospital. She claimed that the delay in treatment caused her to have permanent damage to her heart. Defendant Murrey denied advising Mrs. Stiles that she was not having a heart attack and claimed that Mrs. Stiles refused to be transported to the hospital for treatment.

The jury trial began on February 17, 2003. On February 19, 2003, the Plaintiffs completed their proof at which time the court granted the Defendants’ motion for directed verdict on the Plaintiffs’ claim regarding the Defendant Murrey’s alleged unauthorized practice of medicine. On that same day, the jury returned a verdict finding the Defendants 37% at fault and the Plaintiff Vera Lynne Stiles 63% at fault and the case was dismissed. The Plaintiffs filed a motion for new trial on March 31, 2003. Although it is not in the record, apparently the motion for new trial was overruled by the trial court. The date of entry of the order overruling the motion for new trial is not known. On August 5, 2003, the Plaintiffs filed a notice of appeal. On December 15, 2003, the Plaintiffs filed a six (6) paragraph, two and a half (2 ½) page statement of the evidence and a statement of the issues for appeal. The Defendants filed a motion to strike the statement of evidence and dismiss the appeal asserting that the statement of evidence was not timely filed and that the Plaintiffs had failed to give notice that no transcript or only a partial transcript could be filed pursuant to Tenn. R. App. P. 24(b) and (c). The trial court heard the matter on February 17, 2004 and transferred the pending motion to strike the statement of evidence and dismiss the appeal to this Court. On the same date, February 17, 2004, the Plaintiffs filed a motion with this Court for an extension of time to file the statement of evidence and statement of issues on appeal, claiming that the statement of evidence was filed late because of a miscalculation of time. This Court, by order filed March 11, 2004, granted the motion for extension of time within which to file the Appellant’s statement of evidence and statements of issues on appeal. Thereafter, on March 29, 2004, the Defendants filed a motion in this Court to dismiss the appeal because a statement of evidence was filed instead of a transcript. The motion to dismiss was denied. On March 30, 2004, the Defendants filed in the trial court a counter-statement in response to the statement of evidence asserting the evidence did not present a fair, accurate, and complete account of the proof stating “it simply is not possible within a length of less than 3 pages to recount evidence in a 3-day jury trial...”

In this appeal, the Plaintiffs are challenging the trial court’s refusal to charge three of the Plaintiffs’ proposed jury instructions; the trial court’s action in directing a verdict for the Defendants

¹(...continued)

formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.”

on the issue of whether Defendant Murrey's conduct alleged in the complaint and shown by the proof at trial constituted the unauthorized practice of medicine and negligence *per se*; and whether the trial court erred by allowing the jury to compare the fault of the Plaintiffs and Defendant Murrey with respect to Defendant Murrey's conduct that constituted the unauthorized practice of medicine and negligence *per se*. The statement of evidence filed by the Plaintiffs does not contain any of the jury instructions given by the court, the court's ruling on the requested jury instructions, the motion for directed verdict, or any exhibits or depositions introduced into proof.

There is a dispute between the parties as to the evidence in the record before us. Although we tend to agree with the Defendants that "it simply is not possible within a length of less than 3 pages to recount evidence in a 3-day jury trial," we do not know what evidence was presented to the jury. The trial court did not approve the Plaintiffs' statement of evidence. We are in no position to determine what occurred or what did not occur during the trial of this cause.

It is the responsibility of the trial judge to resolve questions regarding the content of the record. "When a dispute arises, the one who directed the proceedings, the trial judge, is not only the best one, but is the only one who can resolve such disputes absent extraordinary circumstances..." *Artrip v. Crilley*, 688 S.W.2d 451, 453 (Tenn. Ct. App. 1985); *accord Beef N' Bird of America, Inc. v. Continental Casualty Co.*, 803 S.W. 2d 234, 240 (Tenn. Ct. App. 1990).

Tenn. R. App. P. 24(e) of the Tennessee Rules of Appellate Procedure provides:

If any matter properly includable is omitted from the record, is improperly included, or is misstated therein, the record may be corrected or modified to conform to the truth. Any differences regarding whether the record accurately discloses what occurred in the trial court shall be submitted to and settled by the trial court regardless of whether the record has been transmitted to the appellate court. Absent extraordinary circumstances, the determination of the trial court is conclusive.

Accordingly, it is our opinion that we cannot consider this matter at this time because of the dispute over the contents of the statement of evidence and accordingly, pursuant to Tenn. Code Ann. § 27-3-128 and Tenn. R. App. P. 24(e), we remand this cause to the trial court to determine whether the statement of evidence filed by the Plaintiffs conveys a fair, accurate, and complete account of what transpired with respect to those issues that are the bases of this appeal. We note that the Appellant, not the Appellee, has the duty to prepare a transcript or a statement of evidence that is fair, accurate and complete. In the event the trial court determines that the statement of evidence as filed by the Plaintiffs is a fair, accurate, and complete account of the proceedings that form the bases for this appeal, then the clerk of the trial court shall file with the appellate court a supplemental record containing the statement of evidence approved by the trial court, the trial court's order regarding its ruling and the order overruling the motion for new trial. In the event the trial court rules that the statement of evidence as filed by the Plaintiffs is not a fair, accurate, and complete account

of the proceedings that form the bases for this appeal, then the trial court may, in its discretion, allow the Plaintiffs to supplement their statement of evidence. The trial court in any event must approve the Plaintiffs' statement of evidence before it is transmitted to this Court.

We tax the costs of this appeal to the Appellant, Vera Lynne Stiles, for which execution may issue, if necessary.

SHARON G. LEE, JUDGE